



*Eden Environmental Citizen's Group*

March 11, 2019

Via US Mail, Certified

Ms. Jesse Johnson  
C & K Johnson Industries, Inc.  
1061 Samoa Boulevard  
Arcata, CA 95521

Via US Mail

Kay Johnson  
Agent for service  
C & K Johnson Industries, Inc.  
1061 Samoa Boulevard  
Arcata, CA 95521

**Re: 60-Day Notice of Violations and Intent to File Suit Under the Federal Water Pollution Control Act ("Clean Water Act")**

To Officers, Directors, Operators, Property Owners and/or Facility Managers of C&K Johnson Industries, Inc.:

I am writing on behalf of Eden Environmental Citizen's Group ("EDEN") to give legal notice that EDEN intends to file a civil action against C&K Johnson Industries, Inc. ("Discharger") for violations of the Federal Clean Water Act ("CWA" or "Act") 33 U.S.C. § 1251 *et seq.*, that EDEN believes are occurring at the C&K Johnson Industries facility located at 1061 Samoa Boulevard in Arcata, California ("the Facility" or "the site").

EDEN is an environmental citizen's group established under the laws of the State of California to protect, enhance, and assist in the restoration of all rivers, creeks, streams, wetlands, vernal pools, and tributaries of California, for the benefit of its ecosystems and communities.

CWA section 505(b) requires that sixty (60) days prior to the initiation of a civil action under CWA section 505(a), a citizen must give notice of intent to file suit. 33 U.S.C. § 1365(b).

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Notice must be given to the alleged violator, the U.S. Environmental Protection Agency ("EPA"), and the State in which the violations occur.

As required by CWA section 505(b), this Notice of Violation and Intent to File Suit provides notice to the Discharger of the violations which have occurred and continue to occur at the Facility. After the expiration of sixty (60) days from the date of this Notice of Violation and Intent to File Suit, EDEN intends to file suit in federal court against the Discharger under CWA section 505(a) for the violations described more fully below.

**I. THE SPECIFIC STANDARD, LIMITATION, OR ORDER VIOLATED**

EDEN's investigation of the Facility has uncovered significant, ongoing, and continuous violations of the CWA and the General Industrial Storm Water Permit issued by the State of California (NPDES General Permit No. CAS000001 [State Water Resources Control Board ("SWRCB") Water Quality Order No. 92-12-DWQ, as amended by Order No. 97-03-DWQ ("1997 Permit") and by Order No. 2014-0057-DWQ ("2015 Permit") (collectively, the "General Permit").

Information available to EDEN, including documents obtained from California EPA's online Storm Water Multiple Application and Reporting Tracking System ("SMARTS"), indicates that on or around November 9, 1999, C&K Johnson Industries submitted a Notice of Intent ("NOI") to be authorized to discharge storm water from the Facility. On or around May 28, 2015, C&K Johnson Industries submitted an NOI to be authorized to discharge storm water from the Facility under the 2015 Permit. C&K Johnson Industries' assigned Waste Discharger Identification number ("WVID") is 1121015485.

As more fully described in Section III, below, EDEN alleges that in its operations of the Facility, the Discharger has committed ongoing violations of the substantive and procedural requirements of the Federal Clean Water Act, California Water Code §13377, the General Permit, the Regional Water Board Basin Plan, the California Toxics Rule (CTR) 40 C.F.R. § 131.38, and California Code of Regulations, Title 22, § 64431.

**II. THE LOCATION OF THE ALLEGED VIOLATIONS**

**A. The Facility**

The location of the point sources from which the pollutants identified in this Notice are discharged in violation of the CWA is C&K Johnson Industries' permanent facility address of 1061 Samoa Boulevard in Arcata, California.

C&K Johnson Industries is a metal fabrication facility. Facility operations consist primarily of metal fabrication, including the manufacture and painting of structural steel

products; the manufacturing of post tensioning duct (PTD); the storage of corrugated metal pipe (CMP); and the manufacture of precast concrete headwalls. Facility operations are covered under Standard Industrial Classification Codes (SIC) 3499 (Fabricated Metal Products, Not Elsewhere Classified).

Based on the EPA's Industrial Storm Water Fact Sheet for Sector AA – Fabricated Metal Products, polluted discharges from operations at the Facility contain galvanized metals such as zinc, nickel and chromium; heavy metals, such as iron, copper and aluminum, toxic metals, such as lead and cadmium; total suspended solids ("TSS"); chemical oxygen demand (COD); nitrates and nitrites; phosphates; chlorinated solvents; and oil and grease ("O&G"). Many of these pollutants are on the list of chemicals published by the State of California as known to cause cancer, birth defects, and/or developmental or reproductive harm.

Information available to EDEN indicates that the Facility's industrial activities and associated materials are exposed to storm water, and that each of the substances listed on the EPA's Industrial Storm Water Fact Sheet is a potential source of pollutants at the Facility.

#### **B. The Affected Receiving Waters**

The Facility discharges into Humboldt Bay ("Receiving Waters").

The Humboldt Bay is a water of the United States. The CWA requires that water bodies such as the Humboldt Bay meet water quality objectives that protect specific "beneficial uses." The Regional Water Board has issued the North Coast Regional *Basin Water Quality Control Plan* ("Basin Plan") to delineate those water quality objectives.

The Basin Plan identifies the "Beneficial Uses" of water bodies in the region. The Beneficial Uses for the Receiving Waters downstream of the Facility include: commercial and sport fishing, estuarine habitat, fish migration, navigation, preservation of rare and endangered species, water contact and noncontact recreation, shellfish harvesting, fish spawning, and wildlife habitat. Contaminated storm water from the Facility adversely affects the water quality of the Humboldt Bay watershed and threatens the beneficial uses and ecosystem of this watershed.

Furthermore, the Humboldt Bay is listed for water quality impairment on the most recent 303(d)-list for the following: dioxin toxic equivalents and polychlorinated biphenyls (PCBs); PCBs (dioxin-like).

Polluted storm water and non-storm water discharges from industrial facilities, such as the Facility, contribute to the further degradation of already impaired surface waters, and harm aquatic dependent wildlife.

### **III. VIOLATIONS OF THE CLEAN WATER ACT AND GENERAL PERMIT**

#### **A. Failure to Upload SWPPP or Site Map to SMARTS**

The Discharger failed to upload its current Storm Water Pollution Prevention Plan ("SWPPP") for the Facility until November 10, 2015, after receiving a Notice of Non-Compliance from the Water Board. Thus, the Facility operated without a SWPPP between July 1, 2015 (the date the SWPPP was due to be uploaded into SMARTS) and November 10, 2015.

Failure to develop or implement an adequate SWPPP is a violation of Sections II.B.4.f and X of the General Permit.

#### **B. Failure to Develop, Implement and/or Revise an Adequate Monitoring and Reporting Program Pursuant to the General Permit**

Section XI of the General Permit requires Dischargers to develop and implement a storm water monitoring and reporting program ("M&RP") prior to conducting industrial activities. Dischargers have an ongoing obligation to revise the M&RP as necessary to ensure compliance with the General Permit.

The objective of the M&RP is to detect and measure the concentrations of pollutants in a facility's discharge, and to ensure compliance with the General Permit's Discharge Prohibitions, Effluent Limitations, and Receiving Water Limitations. An adequate M&RP ensures that BMPs are effectively reducing and/or eliminating pollutants at the Facility, and it must be evaluated and revised whenever appropriate to ensure compliance with the General Permit.

##### **1. Failure to Conduct Visual Observations**

Section XI(A) of the General Permit requires all Dischargers to conduct visual observations at least once each month, and sampling observations at the same time sampling occurs at a discharge location.

Observations must document the presence of any floating and suspended material, oil and grease, discolorations, turbidity, odor and the source of any pollutants. Dischargers must document and maintain records of observations, observation dates, locations observed, and responses taken to reduce or prevent pollutants in storm water discharges.

EDEN alleges that between July 1, 2015, and the present, the Discharger has failed to conduct monthly and sampling visual observations pursuant to Section XI(A) of the General Permit.

## 2. Failure to Collect and Analyze Storm Water Samples

In addition, EDEN alleges that the Discharger has failed to provide the Regional Water Board with the minimum number of annual documented results of facility run-off sampling as required under Sections XI.B.2 and XI.B.1.1 a of Order No. 2014-0057-PWQ, in violation of the General Permit and the CWA.

Section XI.B.2 of the General Permit requires that all Dischargers collect and analyze storm water samples from two Qualifying Storm Events ("QSEs") within the first half of each reporting year (July 1 to December 31), and two (2) QSEs within the second half of each reporting year (January 1 to June 30).

Section XI.C.6.b provides that if samples are not collected pursuant to the General Permit, an explanation must be included in the Annual Report.

As of the date of this Notice, the Discharger has failed to upload into the SMARTS database system *any* storm water sample analyses for the reporting periods 2014-15, 2015-16, 2016-17, 2017-18 and 2018-19 to date.

## C. Deficient BMP Implementation

Sections I.C, V.A and X.C.1.b of the General Permit require Dischargers to identify and implement minimum and advanced Best Management Practices ("BMPs") that comply with the Best Available Technology ("BAT") and Best Conventional Pollutant Control Technology ("BCT") requirements of the General Permit to reduce or prevent discharges of pollutants in their storm water discharge in a manner that reflects best industry practice, considering technological availability and economic practicability and achievability.

EDEN alleges that C&K Johnson Industries has been conducting industrial activities at the site without adequate BMPs to prevent resulting non-storm water discharges. Non-storm water discharges resulting from these activities are not from sources that are listed among the authorized non-storm water discharges in the General Permit, and thus are always prohibited.

C&K Johnson Industries' failure to develop and/or implement adequate BMPs and pollution controls to meet BAT and BCT at the Facility violates and will continue to violate the CWA and the Industrial General Permit each day the Facility discharges storm water without meeting BAT and BCT.

## D. Discharges In Violation of the General Permit

Except as authorized by Special Conditions of the General Permit, Discharge Prohibition III(B) prohibits permittees from discharging materials other than storm water (non-storm water discharges) either directly or indirectly to waters of the United States. Unauthorized non-storm water discharges must be either eliminated or permitted by a separate NPDES permit.

Information available to EDEN indicates that unauthorized non-storm water discharges occur at the Facility due to inadequate BMP development and/or implementation necessary to prevent these discharges.

EDEN alleges that the Discharger has discharged storm water containing excessive levels of pollutants from the Facility to its Receiving Waters during at least every significant local rain event over 0.1 inches in the last five (5) years.

EDEN hereby puts the Discharger on notice that each time the Facility discharges prohibited non-storm water in violation of Discharge Prohibition III.B of the General Permit is a separate and distinct violation of the General Permit and Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a).

## E. Failure to Update SWPPP and Site Map

The Facility conducted its 2017-18 annual evaluation on June 8, 2018. In the annual evaluation form, it was noted by the Facility's Legally Responsible Party Jesse Johnson that a new discharge location was required in the material storage area, and that the Facility was required to monitor and sample at a new outfall-- DP-3.

In addition, the Facility conducted its 2016-17 annual evaluation on June 28, 2017, which indicated that arching was no longer being done at the facility and a revision to the SWPPP was required to remove the activity as a potential pollutant source. The 2016-17 annual evaluation also indicated that the facility had capped off DP-2 without updating the Site Map to reflect this.

Section II.1.1 of the Industrial General Permit Fact Sheet provides as follows:

**Significant SWPPP Revisions:** Dischargers are required to certify and submit via SMARTS their SWPPP within 30 days of the significant revision(s).

**All Other SWPPP Revisions:** Dischargers are required to submit revisions to the SWPPP that are determined to not be significant every three (3) months in the reporting year

As of the date of this Notice, the Discharger has failed to upload an amended SWPPP pursuant to Sections X(B) and XII(C)(2)(a) of the General Permit.

## F. Failure to Comply with Facility SWPPP

The Facility SWPPP indicates that the facility will collect and analyze storm water samples from two qualified storm events within the first half of each reporting year (July 1 to December 31) and two QSEs within the second half of each reporting year (January 1 to June 30).

As detailed above, the Facility missed collecting storm water samples in the reporting years 2015-16, 2016-17 and 2017-18, and 2018-19.

C&K Johnson Industries may have had other violations that can only be fully identified and documented once discovery and investigation have been completed. Hence, to the extent possible, EDEN includes such violations in this Notice and reserves the right to amend this Notice, if necessary, to include such further violations in future legal proceedings.

The violations discussed herein are derived from eye witness reports and records publicly available. These violations are continuing.

#### IV. THE PERSON OR PERSONS RESPONSIBLE FOR THE VIOLATIONS

The entities responsible for the alleged violations are C&K Johnson Industries, as well as employees of the Facility responsible for compliance with the CWA.

#### V. THE DATE, DATES, OR REASONABLE RANGE OF DATES OF THE VIOLATIONS

The range of dates covered by this 60-day Notice is from at least July 1, 2015, to the date of this Notice. EDEN may from time to time update this Notice to include all violations which may occur after the range of dates covered by this Notice. Some of the violations are continuous in nature; therefore, each day constitutes a violation.

#### VI. CONTACT INFORMATION

The entity giving this 60-day Notice is Eden Environmental Citizen's Group ("EDEN").

Aiden Sanchez  
EDEN ENVIRONMENTAL CITIZEN'S GROUP  
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EDEN has retained counsel in this matter as follows:

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Paul Warner Law  
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Arcata, CA 95518  
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To ensure proper response to this Notice, all communications should be addressed to EDEN's legal counsel, Mr. Paul Warner.

#### VII. RELIEF SOUGHT FOR VIOLATIONS OF THE CLEAN WATER ACT

As discussed herein, the Facility's discharge of pollutants degrades water quality and harms aquatic life in the Receiving Waters. Members of EDEN live, work, and/or recreate near the Receiving Waters. For example, EDEN members use and enjoy the Receiving Waters for fishing, boating, swimming, hiking, biking, bird watching, picnicking, viewing wildlife, and/or engaging in scientific study. The unlawful discharge of pollutants from the Facility impairs each of these uses.

Further, the Facility's discharges of polluted storm water and non-storm water are ongoing and continuous. As a result, the interests of EDEN's members have been, are being, and will continue to be adversely affected by the failure of the Discharger to comply with the General Permit and the Clean Water Act.

CWA §§ 505(a)(1) and 505(f) provide for citizen enforcement actions against any "person," including individuals, corporations, or partnerships, for violations of NPDES permit requirements and for unpermitted discharges of pollutants. 33 U.S.C. §§ 1365(a)(1) and (f), § 1362(c).

Pursuant to Section 309(d) of the Clean Water Act, 33 U.S.C. § 1319(d), and the Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. § 19.4, each separate violation of the Clean Water Act subjects the violator to a penalty for all violations occurring during the period commencing five (5) years prior to the date of the Notice Letter. These provisions of law authorize civil penalties of \$37,500.00 per day per violation for all Clean Water Act violations after January 12, 2009, and \$51,570.00 per day per violation for violations that occurred after November 2, 2015.

In addition to civil penalties, EDEN will seek injunctive relief preventing further violations of the Clean Water Act pursuant to Sections 505(a) and (d), 33 U.S.C. § 1365(a) and (d), declaratory relief, and such other relief as permitted by law. Lastly, pursuant to Section

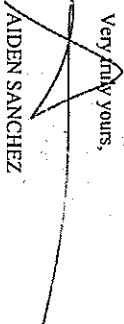
505(d) of the Clean Water Act, 33 U.S.C. § 1365(d), EDEN will seek to recover its litigation costs, including attorneys' and experts' fees.

#### VIII. CONCLUSION

The CWA specifically provides a 60-day notice period to promote resolution of disputes. EDEN encourages the Discharger's counsel to contact EDEN's counsel within 20 days of receipt of this Notice to initiate a discussion regarding the violations detailed herein.

During the 60-day notice period, EDEN is willing to discuss effective remedies for the violations; however, if the Discharger wishes to pursue such discussions in the absence of litigation, it is suggested those discussions be initiated soon so that they may be completed before the end of the 60-day notice period. EDEN reserves the right to file a lawsuit if discussions are continuing when the notice period ends.

Very truly yours,

  
AIDEN SANCHEZ  
Eden Environmental Citizen's Group

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